



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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Matthew J. Strickler
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Director

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Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

**Earl Thompson, Inc.
(Preston Park Development)
Virginia Water Resources and Wetlands
Protection Program Permit No. WP4-17-2101**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Earl Thompson, Inc. (hereinafter referred to as "Thompson"), regarding the Preston Park Development at 3040 Sandy Hook Road, Sandy Hook, VA 23153 (hereinafter referred to as the "Property"), for the purpose of resolving certain violations of the State Water Control Law and applicable permit requirements and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Construction Activity" means any clearing, grading or excavating resulting in land disturbance of equal to or great than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or great than one acre.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
6. "Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.
7. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.
8. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
9. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
10. "Impacts" means results caused by those activities specified in §62.1-44.15:20A of the Code of Virginia.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
13. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
14. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
15. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of

animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.

16. "Property" or "Parcel" means the tract of land at 3040 Sandy Hook Road, Sandy Hook, VA 23153 owned by Thompson.
17. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
18. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
19. "Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered, or degraded stream corridor, including adjacent areas and floodplains, to its natural condition.
20. "Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions. 9 VAC 25-210-10.
21. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
22. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
23. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
24. "Thompson" means Earl Thompson, Inc., a company authorized to do business in Virginia, and its members, affiliates, partners, and subsidiaries. Thompson is a "person" within the meaning of Va. Code § 62.1-44.3.

25. "USACE" means the United States Army Corps of Engineers.
26. "Va. Code" means the Code of Virginia (1950), as amended.
27. "VAC" means the Virginia Administrative Code.
28. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.
29. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Thompson owns and operates a sub-division and development at the Property in Sandy Hook, Virginia. The project is covered by VWP General Permit No. WP4-17-2101, effective February 12, 2018.
2. On June 15, 2018, Department staff inspected the Property for compliance with the requirements of the State Water Control Law and Regulations, and Property permit requirements. The DEQ inspector observed that approximately 50 linear feet of an unnamed tributary to Rocketts Creek north of Impact Area 2 was impacted by the accumulation of up to six inches of sediment. Additionally, approximately 2,010 linear feet of stream north of Impact Area 1 was impacted by the accumulation of up to 20 inches of sediment. Sediment erosion and deposition into the tributary resulted from the absence of appropriately installed and maintained erosion and sediment controls or other best management practices.

Va. Code § 62.1-44.15:20A and 9 VAC 25-210-50A prohibit the discharge of any pollutant into or adjacent to surface waters, or to otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to public health, animal or aquatic life without a Permit. VWP General Permit WP4-17-2101 Part I.B.5 requires that erosion and sedimentation controls shall be designed in accordance with the *Virginia Erosion and Sediment Control Handbook* (3rd Ed. 1992). Controls shall be maintained in good working order to minimize impacts to state waters. Part I.B.6 of the permit requires Thompson to stabilize exposed slopes and streambanks immediately upon completion of work in each permitted impact area. All denuded areas are also required to be stabilized. Thompson did not have a Permit for the above activities and did not adequately maintain erosion and sediment controls.

3. DEQ staff reported that boundary flagging to mark non-impacted surface waters within 50 feet of permitted activities was missing and/or damaged around non-impacted surface water.

VWP General Permit WP4-17-2101 Part I.B.10 requires Thompson to mark all non-impacted surface waters areas within 50 feet of authorized activities in a project for the life of the construction activity to preclude unauthorized disturbance to surface waters during construction.

4. As part of DEQ's review of Property activities, the inspector reported that the required 10-day notification of construction commencement was not received by DEQ in advance of construction activities.

VWP General Permit WP4-17-2101 Part II.E.5 requires Thompson to notify DEQ in writing prior to the initiation of activities at the Property, including a projected schedule of activities and construction completion. Thompson did not provide the required notice to DEQ.

5. On July 17, 2018, DEQ issued NOV No. 1806-00761 to Thompson, providing notice of the observations documented in the June 15, 2018 inspection report.
6. On August 8, 2018, Department staff met with representatives of Thompson at the Property to discuss the violations, and to evaluate corrective action taken at the Property. Thompson had removed sediment from the stream substrate, stabilized slopes, installed and repaired silt fence where required, removed silt fence and hay bale debris from stream channels, installed wetland boundary tape where necessary, and submitted the required pre-construction notice.
7. Based on the foregoing information, the Board concludes that Thompson violated Va. Code § 62.1-44.15:20A, 9 VAC 25-210-50A, and requirements at VWP General Permit WP4-17-2101 Parts I.B.6 and I.B.10, and WP4-17-2101 Part II.E.5
8. DEQ staff have verified by inspections on July 11 and August 8, 2018 that the violations described above are corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Thompson, and Thompson agrees to:

1. Pay a civil charge of \$39,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Thompson shall include its Federal Employer Identification Number (FEIN) [(xx-xxxxxxx)] with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department is required to refer collection of moneys due under this Order to the Department of Law, Thompson shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Thompson for good cause shown by Thompson, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and NOV No. 1806-00761 dated July 17, 2108. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Thompson admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Thompson consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Thompson declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Thompson to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Thompson shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Thompson shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Thompson shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Thompson. Nevertheless, Thompson agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Thompson has completed all of the requirements of the Order;
 - b. Thompson petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Thompson.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Thompson from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Thompson and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Thompson certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Thompson to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Thompson.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Thompson voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 27th day of December, 2018.



(FOR)
James Golden, Regional Director
Department of Environmental Quality

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Earl Thompson, Inc. voluntarily agrees to the issuance of this Order.

Date: 11-5-18 By: [Signature]
Earl Thompson for Principle
Earl Thompson, Inc.

Commonwealth of Virginia
City/County of Richland

The foregoing document was signed and acknowledged before me this 5 day of
NOV, 2018, by Earl Thompson who is
OWNER of Earl Thompson, Inc., on behalf of the company.

[Signature]
Notary Public
7720647
Registration No.

My commission expires: 2/28/21

Notary seal:

Commonwealth Of Virginia
Rebecca L Woody - Notary Public
Commission No. 7720647
My Commission Expires 2-28-21